

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 13 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

DAVID MOSTNY, dba Eurowrap Ltd.,

Plaintiff - Appellant,

v.

WINNIE PAPIR, A/S,

Defendant - Appellee.

No. 04-15119

D.C. No. CV-03-00509-MEJ

MEMORANDUM^{*}

DAVID MOSTNY, dba Eurowrap Ltd.,

Plaintiff - Appellant,

v.

WINNIE PAPIR, A/S,

Defendant - Appellee.

No. 04-16287

D.C. No. CV-03-00509-MEJ

Appeal from the United States District Court
for the Northern District of California
Maria-Elena James, Magistrate Judge, Presiding

Argued and Submitted October 20, 2005
San Francisco, California

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

1. To preclude litigation in an alternate forum, a forum-selection clause must specify a venue or designate an *exclusive* jurisdiction for disputes arising out of the contract. *See Docksider, Ltd. v. Sea Technology, Ltd.*, 875 F.2d 762, 764 (9th Cir. 1989); *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75, 77–78 (9th Cir. 1987). The clause here (“the parties accept the jurisdiction of the Danish Courts”) contains no “language indicating the parties’ intent to make jurisdiction exclusive.” *Docksider, Ltd.*, 875 F.2d at 764 (citation omitted). Therefore, the district court erred in interpreting the clause to preclude suit in other jurisdictions outside of Denmark. The order dismissing for improper venue accordingly is reversed.
2. Because Winnie Papir A/S is no longer the “prevailing party” under the contract, the order awarding attorney’s fees is also reversed. *See, e.g., River Bank America v. Diller*, 38 Cal.App.4th 1400, 1426 (1995).

REVERSED and REMANDED.